

PT 00-4

Tax Type: Property Tax

Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

MAGNA BANK N.A. (lessor))		
BOARD OF TRUSTEES OF COMMUNITY)		
COLLEGE DISTRICT NO. 526 (lessee))	A.H. Docket #	98-PT-0079
Applicant)		
)	Docket #	98-84-36
v.)		
)	Parcel Index #	14-28-478-020
THE DEPARTMENT OF REVENUE)		14-28-440-026
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. J. Patrick Joyce, Jr. and Ms. Lorilea Buerket, Attorneys at Law appeared on behalf of the Board of Trustees of Community College District No. 526, a body politic and corporate, also known as Lincoln Land Community College (hereinafter referred to as "LLCC")

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on May 13, 1999, to determine whether or not Sangamon County Parcel Index Nos. 14-28-478-020 and 14-28-440-026 qualified for exemption from real estate taxation for the 1998 assessment year. Sangamon County Parcel Index No. 14-28-478-020 is improved with a three level brick building. The first level of the building is located below grade level. Sangamon County Parcel Index No. 14-28-440-026 is improved with an asphalt-paved

parking lot which contains parking spaces for 88 vehicles. This parking lot is located across Mason Street from Sangamon County Parcel Index No. 14-28-478-020.

Mr. James M. Howard, Vice President of Finance and Administration of LLCC was present and testified on behalf of LLCC.

The issues in this matter include, first whether LLCC owned the parcels here in issue for real estate tax exemption purposes during all or part of the 1998 assessment year; secondly, whether these parcels were being adapted for exempt use during 1998; thirdly, whether Sangamon County Parcel Index No. 14-28-478-020 was leased or otherwise used with a view to profit during 1998; and lastly, whether Sangamon County Parcel Index No. 14-28-440-026 was either not used for exempt purposes or was leased or used for profit during 1998.

Following the submission of all of the evidence and a review of the record, it is determined that LLCC has been the owner for real estate tax purposes of the parcels here in issue and the improvements thereon from and after May 5, 1998. It is also determined that the parcels here in issue were not being adapted for exempt use during 1998. It is further determined that Sangamon County Parcel Index No. 14-28-478-020 was leased or otherwise used with a view to profit during 1998. Finally it is determined that Sangamon County Parcel Index No. 14-28-440-026 was not used for exempt purposes during the period May 5, 1998, through December 31, 1998.

I therefore recommend that Sangamon County Parcel Index Nos. 14-28-478-020 and 14-28-440-026 remain on the tax rolls for the period May 5, 1998, through December 31, 1998, and be assessed to the owner thereof.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcels here in issue did not qualify for exemption for the 1998 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 9.

2. On September 10, 1998, the Sangamon County Board of Review transmitted to the

Department an Application for Property Tax Exemption To Board of Review concerning the parcels here in issue for the 1998 assessment year. (Dept. Ex. No. 2)

3. On October 29, 1998, the Department advised LLCC that it was denying the exemption of the parcels here in issue for the reasons that said parcels were not in exempt ownership and also they were not in exempt use. (Dept. Ex. No. 3)

4. By a letter dated November 13, 1998, one of the attorneys for LLCC requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter, conducted on May 13, 1999, was held pursuant to that request. (Dept. Ex. No. 5)

6. LLCC is a Public Community College organized pursuant to the Public Community College Act (110 **ILCS** 805/1-1 *et seq.*). (Dept. Ex. 2H)

7. Since about 1990 the LLCC faculty has been conducting training for the Illinois Department of Central Management Services (hereinafter referred to as “CMS”) pursuant to various training agreements. This training had been taking place at a CMS facility on Washington Street in Springfield. By early 1998 it was apparent that this CMS training program had outgrown the Washington Street facility. (Appl. Ex. No. 18, Tr. pp. 16 & 17)

8. The Public Community College Act (hereinafter referred to as the “Act”) does not authorize Community Colleges to finance the purchase of land and buildings by the use of conventional mortgage financing. However, the Act does authorize a contract for deed or a lease purchase agreement as a method for a Community College to purchase land or buildings. (Tr. p. 19)

9. On February 6, 1998, LLCC entered into a Memorandum of Understanding with Sam Nichols and Robert Armstrong to purchase the parcels here in issue. (Appl. Ex. No. 1-Ex. A)

10. On March 30, 1998, LLCC, as purchaser, entered into a Contract for Sale of Real Estate with Property Services of Illinois, Inc., as seller. Sam Nichols and Robert Armstrong were officers and principals of Property Services of Illinois, Inc. (Appl. Ex. No. 1-Ex. B, Tr. p. 26)

11. On May 1, 1998, LLCC assigned its interest as purchaser pursuant to the Contract for the Sale of Real Estate to Magna Bank N. A. (hereinafter referred to as “Magna”). (Appl. Ex. No.1-Ex.C)

12. On May 5, 1998, Property Services of Illinois, Inc. conveyed the parcels here in issue and the improvements thereon to Magna by a warranty deed. (Dept. Ex. No. 2G)

13. Pursuant to a lease purchase agreement dated May 1, 1998, Magna, as lessor, leased the parcels here in issue and the improvements thereon to LLCC for a term of 20 years. (Dept. Ex. No. 2H)

14. LLCC elected to pursue the lease purchase of these parcels because the Public Community College Act (hereinafter referred to as the “Act”) does not authorize Community Colleges to finance the purchase of land and buildings by the use of a conventional mortgage. The Act however, does allow Community Colleges to purchase land using either a contract for deed or a lease purchase agreement. Pursuant to the Act, Community Colleges are authorized to enter into a contract for deed for a period of time not to exceed 10 years or a lease purchase agreement for a period of time not to exceed 20 years. (Tr. p. 19)

15. The lease purchase agreement between Magna as lessor and LLCC as lessee was for a term of 20 years. The payment schedule attached to that agreement was for 20 years and breaks each payment down into principal and interest. The total purchase price of these two parcels including the cost to adapt the building on Sangamon County Parcel Index No. 14-28-478-020 was \$2,700,000.00. The agreement allowed LLCC to prepay any portion of the lease payments at any time. At the end of the term of the lease in the year 2018, title to these parcels vests in LLCC without any additional payment. (Dept. Ex. 2H, Appl Ex. No. 6, Tr. pp. 22 & 23)

16. LLCC pursuant to the lease is responsible for the maintenance and repair of the property, any real estate taxes assessed against the property, and insurance. The lease gives LLCC the right to alter or modify the property at its own cost. (Tr. pp. 23 & 24)

17. At the time that LLCC obtained possession of the building on Sangamon County Parcel Index No. 14-28-478-020 on May 5, 1998, there was a holdover tenant occupying

approximately the western two thirds of that building. That holdover tenant was State Beauty Supply. State Beauty Supply vacated the premises on or about September 14, 1998. Major demolition work and full reconstruction began on or about September 15, 1998. (Appl. Exs. 16 & 17, Tr. pp. 26-28)

18. The renovation and adaptation of the building was completed and the building was turned over to LLCC on March 1, 1999. Classes in the building began on April 5, 1999. (Tr. p. 28)

19. On December 18, 1998, LLCC as landlord entered into a 10-year lease with CMS concerning the building located on Sangamon County Parcel Index No. 14-28-478-020. CMS pursuant to the lease is leasing a total of 9,109 square feet. This 9,109 square feet is made up of two components. The first component is 6,316.75 square feet of space to be used exclusively by CMS. The remainder is shared use space, which is available to CMS on a part-time basis. This shared use space is available to CMS, on a first come first serve basis. (Tr. pp. 33 & 34)

20. Pursuant to the lease between LLCC and CMS the total rent for the ten years, including amortization for improvements will be \$1,073,951.40. (Appl. Ex. No. 20)

21. On November 6, 1998, LLCC as landlord entered into a lease for a term of 4 years and 10 months with the Board of Trustees of the University of Illinois at Springfield (hereinafter referred to as "UIS") as tenant, with an option to renew for an additional 5 years. This lease includes 391.5 square feet of space for the exclusive use of UIS and the remainder is shared use space which is available on a first come first serve basis. The base annual rent for the initial term of the lease is \$24,480.00. (Appl. Ex. No. 19)

22. It is contemplated that CMS will use the building either for testing and assessment of State of Illinois personnel or the training of those persons, conducted by the LLCC faculty from 8:00 A. M. through 5:00 P. M., Monday through Friday. After 5:00 P. M. or on weekends either LLCC or UIS may use the shared use space for classes. (Tr. pp. 38 & 39)

23. The floor plans indicate that CMS pursuant to its lease with LLCC has 6316.75 square feet of dedicated space for its exclusive use. The floor plans also indicate that UIS

pursuant to its lease with LLCC has 391.5 square feet of dedicated space for its exclusive use. The floor plans do not indicate that LLCC has any space for its exclusive use. (Appl. Ex. Nos. 23, 24, & 25)

24. Sangamon County Parcel Index No. 14-28-440-026 is located across Mason Street from Sangamon County Parcel Index No. 14-28-478-020. Sangamon County Parcel Index No. 14-28-440-026 is improved with an asphalt-paved parking lot with parking spaces for 88 vehicles.

25. From May 5, 1998, through December 31, 1998, Sangamon County Parcel Index No. 14-28-440-026 was used by the contractors engaged in the adaptation of the building on Sangamon County Parcel Index No. 14-28-478-020 for parking their construction trailers and as a staging area. (Tr. p. 63)

26. Beginning in March 1999 there were signs on this parking lot which stated “parking for Central Management Services, Lincoln Land Community College, and University of Illinois employees and students”. (Tr. p. 55)

27. During 1999 there was no method established to identify who was authorized to park in the parking lot and who was not authorized to park there. The parking lot was patrolled by a LLCC security officer. (Tr. p. 55)

28. The training agreement between LLCC and CMS dated March 30, 1999, states that LLCC will provide 88 parking places for training center enrollees and staff. (Appl. Ex. 18)

29. The lease agreement between LLCC and CMS provides that LLCC will provide parking for 42 vehicles. (Appl. Ex. 20 p.3)

30. The lease agreement between LLCC and UIS provides that LLCC will provide parking for two UIS staff and also parking for UIS students. (Appl. Ex. 19 p. 4)

31. It came to the attention of the Administrative Law Judge on May 5, 1999, that CMS and UIS were tenants in the building on Sangamon County Parcel Index No. 14-28-478-020. The application for exemption and other documents filed in this matter by the applicant before that date had not disclosed that there were two tenants occupying space in that building. An

Order was immediately issued in this matter requesting LLCC to produce a copy of the leases between LLCC and CMS and LLCC and UIS. The Order also requested a copy of the floor plans of the building which indicated what organization had the right to occupy each space in the building. One copy of this Order was sent to the attorneys for LLCC by certified mail on May 6, 1999, and one copy was faxed to said attorneys on May 7, 1999. LLCC provided the aforesaid requested documents before the hearing held on May 13, 1999. (Dept. Ex. Nos. 7 & 9, also Appl. Ex. Nos. 19, 20, 23, 24, & 25)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Concerning public community college districts 35 **ILCS** 200/15-135 provides in part as follows:

All property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit is exempt.

Concerning parking areas 35 **ILCS** 200/15-125 provides as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption are exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v.

Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore very clear that the burden of proof is on the one seeking the exemption to establish that it is entitled to an exemption.

In this case LLCC in view of the \$2,700,000.00 cost of the purchase and renovation of these parcels desired a long-term method of financing. Pursuant to the terms of the Act under which LLCC is authorized, one of the long-term methods of financing which was available was either a 20-year lease purchase agreement or a 10-year contract for deed. On February 6, 1998, LLCC entered into a Memorandum of Understanding with Sam Nichols and Robert Armstrong to purchase these parcels. On March 30, 1998, LLCC as purchaser entered into a Contract for Sale of Real Estate. On May 1, 1998, LLCC assigned its interest as purchaser pursuant to the Contract for the Sale of Real Estate to Magna. On May 5, 1998, the parcels here in issue were conveyed to Magna. By a lease purchase agreement dated May 1, 1998, Magna leased these parcels to LLCC for a term of 20 years. The lease payment schedule breaks each payment down into principal and interest. At the end of the 20-year term of this lease, title to these parcels vests in LLCC without any additional payment. In addition, the lease allows LLCC to prepay any portion of the lease payments at any time. Pursuant to the lease LLCC is responsible for the maintenance and repair of the property, any real estate taxes assessed against the property, and insurance. The lease also gives LLCC the right to alter or modify the property at its own cost.

In the case of Southern Illinois University Foundation v. Booker, 98 Ill.App.3d 1062 (5th

Dist. 1981), Southern Illinois University conveyed certain land to Southern Illinois University Foundation which borrowed money from the Federal Housing Administration (hereinafter referred to as “FHA”) to construct low income married student housing on the property for the use of Southern Illinois University students. This loan arrangement required the property owner to enter into a long-term loan with FHA which the University was prohibited from doing. The Court in determining that pursuant to the financing arrangement, the University was the owner of the property for real estate tax purposes stated as follows:

The key elements of ownership are control and the right to enjoy the benefits of the property.

In this case because of the necessity of LLCC complying with the Act, I conclude that the lease purchase agreement between Magna and LLCC is a financing agreement. LLCC is the party which is in control of the parcels and enjoying the benefits of said parcels. I therefore conclude that LLCC was the owner of the parcels here in issue for real estate tax exemption purposes during the period May 5, 1998, through December 31, 1998.

However, ownership is not the only criteria that the statute requires. The language exempting community college districts found at 35 **ILCS** 200/15-135 provides as follows:

All property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit is exempt.

This language sets forth two requirements for exemption. First, the property must be owned by the community college district and secondly, it must not be leased or used with a view to profit. I have concluded that LLCC owns this parcel for real estate tax exemption purposes. Concerning whether or not the parcel is leased or otherwise used with a view to profit LLCC has furnished two leases concerning the building on this parcel. The first lease is with CMS and the second with UIS. The CMS lease is a 10-year lease with total rental payments of \$1,073,951.40. If this lease were renewed for a second 10 years, or until the termination of the lease purchase agreement between Magna and LLCC, the total rent paid by CMS to LLCC would be

\$1,976,653.80.

The initial lease from LLCC to UIS is for 4 years and 10 months. The total annual rent to be paid pursuant to that lease is \$24,480.00. That lease provides for one 5-year renewal. If that lease were renewed for a total of 20 years the total rent paid by UIS would be \$489,600.00.

To summarize then, if the leases from LLCC to CMS and LLCC to UIS were each renewed for a total of 20 years at the current annual rent, LLCC would receive rent totaling \$2,466,253.80. The total obligation of LLCC to Magna pursuant to the 20-year lease purchase agreement is \$2,700,000.00. I therefore conclude that Sangamon County Parcel Index No.14-28-478-020 was leased or otherwise used for profit as a result of the lease from LLCC to CMS and the lease from LLCC to UIS. Illinois Courts have consistently stated the general principle that the use of property to produce income is not an exempt use. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). *See also* The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It has also been held that a lease is a lease for profit whether the lessor generates a profit or sustains a loss. *See* Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934).

One of the attorneys for LLCC points out that one of the uses of the building on this parcel by LLCC is to provide training to CMS employees. Also, the use of the areas leased by UIS would be used for educational purposes. That attorney then cites the case of Children's Development Center, Inc. v. Olson, 52 Ill.2d 332 (1972) for the proposition that a lease would not be considered a lease for profit when the lessee uses the property for the tax-exempt purposes of the lessee. In Children's Development Center, Inc. v. Olson, *Id.* the lessor was an exempt religious organization and the lessee was a charitable organization which was required by statute to both own and use the leased property for charitable purposes. In contrast, LLCC is a nonexempt owner since it is leasing or otherwise using both of these parcels for profit. Both of the lessees, in this case, CMS and UIS, are instrumentalities of the State of Illinois.

Concerning State of Illinois property, 35 **ILCS** 200/15-55 provides as follows:

All property belonging to the State of Illinois is exempt.

Consequently the exemption for instrumentalities of the state is an ownership only exemption. In the case of The Village of Oak Park v. Rosewell, 115 Ill.App.3d 497 (1st Dist. 1983), the Appellate Court considered a case where the First Presbyterian Church of Oak Park owned two adjoining parcels of land which it used as a parking lot on Sundays from 9 A.M. to 10 P.M. and which it leased during the rest of the week to the Village of Oak Park. In that case, the village as does the applicant herein, relied on the decision in Children's Development Center, Inc. v. Olson, *Id.* in requesting a property tax exemption. The village contended that the church parking lot should be exempt since it was leased by a religious organization, as an exempt entity, to the village, which was also exempt.

In rejecting that argument, the Appellate Court found that the Children's Development Center, Inc. case was distinguishable and stated as follows:

The section 19.7 (charitable) exemption, like that in section 19.2 for religious institutions, turns on the primary use of the property. Unlike those provisions, the exemption provided for municipalities turns solely on ownership of the property. (Village of Oak Park v. Rosewell, 115 Ill.App.3d 497, 501)

The Appellate Court then went on to hold that to broaden the municipality exemption to include property only used for municipal purposes and not owned by a municipality would add a new exemption to paragraph 19.6. Paragraph 19.6 was the section where the municipality exemption was found in the Revenue Act of 1939. The Court refused to broaden that exemption.

In this case, LLCC, a nonexempt entity concerning these parcels since they are leased or otherwise used for profit, is seeking an exemption pursuant to the State of Illinois exemption for CMS and UIS. The State of Illinois exemption in the Property Tax Code, like the municipality exemption found in paragraph 19.6 of the Revenue Act of 1939, requires ownership and only ownership. As in the Village of Oak Park case, the lessees in this case must own the property to qualify for exemption. Since these lessees do not own these parcels they do not qualify for exemption.

It is also noted that from May 5, 1998, through September 14, 1998, State Beauty Supply, a holdover tenant, occupied approximately two thirds of the building pursuant to a lease for profit with the former owner of Sangamon County Parcel Index No. 14-28-478-020.

I therefore conclude that Sangamon County Parcel Index No. 14-28-478-020 was leased or otherwise used for profit on or after November 6, 1998.

Concerning Sangamon County Parcel Index No. 14-28-440-026 which is improved with an 88-vehicle asphalt paved parking lot, the pertinent statute found at 35 **ILCS** 200/15-125 provides as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption are exempt. (Emphasis supplied)

As previously noted both the exemption for public school districts and the exemption for public community college districts are included in Section 35 **ILCS** 200/15-135. The language for each of those exemptions is exactly the same. However the above quoted exemption for parking lots only provides an exemption for parking lots owned by school districts and does not provide an exemption for parking lots owned by community college districts.

During the period May 5, 1998, through December 31, 1998, Sangamon County Parcel No. 14-28-440-026 failed to qualify for exemption as a parking lot as it was used as a staging area by the for profit contractors working on the building on Sangamon County Parcel Index No. 14-28-478-020. Such a use is not “a part of a use for which an exemption is provided by this Code.”

This parking lot at the time of the hearing contained signs which stated parking for Central Management Services, Lincoln Land Community College, and University of Illinois employees and students. The training agreement between LLCC and CMS provides that LLCC will provide 88 parking spaces for CMS, its employee’s, and students. The lease agreement between LLCC and CMS, which has already been determined to be a lease for profit, provides

that LLCC will provide parking for 42 vehicles. The lease agreement between LLCC and UIS, which has also been determined to be a lease for profit, provides that LLCC will provide parking for two UIS staff members and also parking for UIS students. LLCC offered no evidence as to who was actually parking on the lot at the time of the hearing. In fact the witness for LLCC stated that there was no method established to determine who was authorized to park on the lot or who was actually parking on the lot.

I therefore conclude that Sangamon County Parcel No. 14-28-440-026 which was the asphalt-paved parking lot was not used for an exempt purpose during the period May 5, 1998, through December 31, 1998. I also conclude that once classes began to be held in the building on Sangamon County Parcel Index No. 14-28-478-020 this parcel was leased or used for profit, which was also not an exempt purpose.

Concerning LLCC's allegation that Sangamon County Parcel Index No. 14-28-478-020 was in the process of adaptation for exempt use, in the case of Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987), Weslin Properties on May 26, 1983, purchased a 24.3 acre tract to be developed into an Urgent Care Center, hospital, and related medical facilities. During 1983 Weslin Properties, Inc. approved a site plan and hired an architect. During 1984 construction of the Urgent Care facility began. In 1985 the Urgent Care Center was completed and occupied. The court held that the Urgent Care facility qualified for exemption during 1983 but that the remainder of said parcel did not qualify for exemption during that year. The plans for the remainder of said parcel were not complete and Weslin Properties had not satisfied the court that all of the intended uses of the remainder of that parcel would qualify for exemption.

In this case the building on Sangamon County Parcel Index No. 14-28-478-020 after the adaptation is completed does not qualify for exemption since it is leased or otherwise used for profit. Consequently the building on Sangamon County Parcel Index No. 14-28-478-020 during the period it was being remodeled from September 15, 1998, through December 31, 1998, did not qualify for exemption since it was not being adapted for exempt use.

I therefore conclude that Sangamon County Parcel Index Nos. 14-28-478-020 and 14-28-440-026 did not qualify for exemption from real estate taxation for the period May 5, 1998, through December 31, 1998.

I therefore recommend that Sangamon County Parcel Index Nos. 14-28-478-020 and 14-28-440-026 remain on the tax rolls for the period May 5, 1998, through December 31, 1998, and be assessed to the owner of those parcels.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
January 6, 2000